



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

CHAN

March 13, 2012

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Diogenes Escano**
Tax Registry No. 941711
Police Service Area 7
Disciplinary Case No. 86562/10

The above named member of the service appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster on January 21, 2011 and was charged with the following:

DISCIPLINARY CASE NO. 86562/10

1. Said Police Officer Diogenes Escano, assigned to Housing Borough Bronx, while off-duty, on or about February 21, 2010, at Marion Avenue and East 198th Street, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said officer did display and point his firearm at Mr. Juan Hernandez during a traffic dispute.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT – PROHIBITED CONDUCT

2. Said Police Officer Diogenes Escano assigned as indicated in Specification #1, while off-duty on or about February 21, 2010, at Marion Avenue and East 198th Street, in Bronx County, having been involved in an off-duty incident, did thereafter fail and neglect to report said incident to the Patrol Supervisor, as required. *(As amended)*

P.G. 212-32, Page 1, Paragraph 2 Note

OFF-DUTY INCIDENTS INVOLVED UNIFORMED MEMBERS OF THE SERVICE

3. Said Police Officer Diogenes Escano, assigned as indicated in Specification #1, while off-duty, on or about February 21, 2010, at Marion Avenue and East 198th Street, in Bronx County, failed to remain at the scene of an off-duty incident when it was feasible and consistent with his personal safety.

P.G. 212-32, Page 1, Paragraph 1

OFF-DUTY INCIDENTS INVOLVING UNIFORMED MEMBERS OF THE SERVICE

4. Said Police Officer Diogenes Escano, assigned as indicated in Specification #1, while off-duty, on or about February 21, 2010, at Marion Avenue and East 198th Street, in Bronx County, failed to carry his shield while armed, as required.

P.G. 204-15, Page 1, Paragraph 3 SHIELDS/NAMEPLATES/IDENTIFICATION CARDS

5. Said Police Officer Diogenes Escano assigned as indicated in Specification #1, while off-duty, on or about February 21, 2010, at Marion Avenue and East 198th Street, in Bronx County, upon observing, having become aware of, or upon receiving an allegation of corruption or serious misconduct involving a member of service, did fail and neglect to notify the Internal Affairs Bureau, as required.

P.G. 207-21, Pages 1 & 2 ALLEGATIONS OF CORRUPTION AND SERIOUS MISCONDUCT AGAINST MEMBERS OF THE SERVICE

6. Said Police Officer Diogenes Escano, assigned as indicated in Specification #1, on or about March 29, 2010, at a location known to the Department, in Bronx County, did wrongfully and without just cause prevent or interfere with an official Department investigation, to wit: said officer stated during an official Department interview that an on-duty Member of Service directed said officer to leave the scene of an off duty incident involving said officer. (*As amended*)

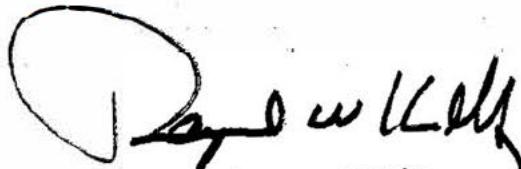
P.G. 203-10, Page 1, Paragraph 2(d) PUBLIC CONTACT – PROHIBITED CONDUCT GENERAL REGULATIONS

In a Memorandum dated August 4, 2011, Assistant Deputy Commissioner Claudia Daniels-DePeyster found the Respondent Guilty of Specification Nos. 1, 2, 3, 4, 5 and 6 in Disciplinary Case No. 86562/10. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The misconduct here is egregious, and such behavior and conduct also unquestionably compromises Respondent Diogenes's ability to remain a viable member of this Department; thus, his immediate separation from the Department is required.

Although Assistant Deputy Commissioner Daniels-Depeyster recommends that Respondent Escano be summarily dismissed, I will permit an alternative manner of separation from the Department at this time. It is therefore directed that a post-trial vested-interest retirement agreement be implemented with the Respondent. In consideration of such, Respondent Escano is to remain, and to separate from the Department, on a continued suspended duty status. The Respondent is to also forfeit all suspension days since served and to be served, including all accrued leave and time balances, and will immediately be placed on a One-Year Dismissal Probation period.

Such vested-interest retirement shall also include Respondent Escano's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If Respondent Escano does not agree to the terms of this vested-interest retirement as noted, this office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY.**



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

August 4, 2011

In the Matter of the Charges and Specifications : Case No. 86562/10

- against - :

Police Officer Diogenes Escano :

Tax Registry No. 941711 :

Police Service Area 7 :

At: Police Headquarters
 One Police Plaza
 New York, New York 10038

Before: Honorable Claudia Daniels-DePeyster
 Assistant Deputy Commissioner - Trials

A P P E A R A N C E:

For the Department: Beth Douglas, Esq.
 Department Advocate's Office
 One Police Plaza
 New York, New York 10038

For the Respondent: Richard Murray
 30 Vesey Street – PH
 New York, NY 10007

To:

HONORABLE RAYMOND W. KELLY
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT

POLICE OFFICER DIOGENES ESCANO

The above-named member of the Department appeared before me on January 21, 2011, March 7, 2011, and April 1, 2011, charged with the following:

1. Said Police Officer Diogenes Escano, assigned to Housing Borough Bronx¹, while off-duty, on or about February 21, 2010, at Marion Avenue and East 198th Street, in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said officer did display and point his firearm at Mr. Juan Hernandez during a traffic dispute.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT – PROHIBITED CONDUCT

2. Said Police Officer Diogenes Escano assigned as indicated in Specification #1, while off-duty on or about February 21, 2010, at Marion Avenue and East 198th Street, in Bronx County, having been involved in an off-duty incident, did thereafter fail and neglect to report said incident to the Patrol Supervisor, as required. (*As amended*)

P.G. 212-32, Page 1, Paragraph 2 Note – OFF-DUTY INCIDENTS INVOLVED UNIFORMED MEMBERS OF THE SERVICE

3. Said Police Officer Diogenes Escano, assigned as indicated in Specification #1, while off-duty, on or about February 21, 2010, at Marion Avenue and East 198th Street, in Bronx County, failed to remain at the scene of an off-duty incident when it was feasible and consistent with his personal safety.

P.G. 212-32, Page 1, Paragraph 1 – OFF-DUTY INCIDENTS INVOLVING UNIFORMED MEMBERS OF THE SERVICE

4. Said Police Officer Diogenes Escano, assigned as indicated in Specification #1, while off-duty, on or about February 21, 2010, at Marion Avenue and East 198th Street, in Bronx County, failed to carry his shield while armed, as required.

P.G. 204-15, Page 1, Paragraph 3 – SHIELDS/NAMEPLATES/IDENTIFICATION CARDS

5. Said Police Officer Diogenes Escano assigned as indicated in Specification #1, while off-duty, on or about February 21, 2010, at Marion Avenue and East 198th Street, in Bronx County, upon observing, having become aware of, or upon receiving an allegation of corruption or serious misconduct involving a member of service, did fail and neglect to notify the Internal Affairs Bureau, as required.

¹ On February 21, 2010, Respondent was assigned to the 43 Precinct.

POLICE OFFICER DIOGENES ESCANO

P.G. 207-21, Pages 1 & 2 -- ALLEGATIONS OF CORRUPTION AND SERIOUS
MISCONDUCT AGAINST MEMBERS OF THE
SERVICE

6. Said Police Officer Diogenes Escano, assigned as indicated in Specification #1, on or about March 29, 2010, at a location known to the Department, in Bronx County, did wrongfully and without just cause prevent or interfere with an official Department investigation, to wit: said officer stated during an official Department interview that an on duty Member of Service directed said officer to leave the scene of an off-duty incident involving said officer. (*As amended*)

P.G. 203-10, Page 1, Paragraph 2(d) – PUBLIC CONTACT – PROHIBITED
CONDUCT GENERAL REGULATIONS

The Department was represented by Beth Douglas, Esq., Department Advocate's Office, and Respondent was represented by Richard Murray, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

SUMMARY OF EVIDENCE PRESENTEDThe Department's Case

The Department called Police Officer Andrew Lane, Juan Hernandez, Wellington Hernandez, Sergeant Alfred Vargas, Police Officer Richard Baker, and Sergeant Parul Ahmed as witnesses.

POLICE OFFICER DIOGENES ESCANOPolice Officer Andrew Lane

Lane, a five-and-one-half-year member of the Department, is currently assigned to the 52 Precinct. On February 21, 2010, he worked from 11:35 p.m. until 7:50 a.m. on patrol duty in a radio motor patrol car (RMP). His steady partner was Police Officer Richard Baker, who was assigned to patrol duty with him that day. At approximately 6:40 a.m., Lane was parked in an RMP on the right side of Marion Avenue, a one-way street that heads southbound, near the intersection of Oliver Street.

Lane testified that a sedan reversed the wrong way up Marion Avenue and pulled up next to his RMP. Lane was on the street side of the RMP; Baker was on the side facing the sidewalk. A man (subsequently identified as Respondent) rolled down his window, pointed in the direction of East 198 Street and stated: "That guy down there is going to say I pulled a gun on him." Lane asked Respondent to pull over to the side and pointed to the direction of Oliver Street. A livery cab then reversed up Marion Avenue towards his RMP. The driver (subsequently identified as Juan Hernandez) exited his vehicle, pointed at Respondent, and stated that he pulled a gun on him.

Lane approached Respondent and asked him if he had a gun. Respondent replied that he did and produced his Department identification. According to Lane, Baker approached them and told Respondent to wait in his car. Lane testified that he then observed Respondent drive southbound on Marion Avenue, away from their parked RMP, and make a left on East 198 Street. Lane did not give Respondent any verbal commands indicating that he was permitted to leave, nor did he hear Baker give any such commands.

POLICE OFFICER DIOGENES ESCANO

Lane entered his RMP, followed Respondent down East 198 Street, and conducted a canvass by proceeding down Webster Avenue and back to the original location, at Oliver Street and Marion Avenue. Lane testified that he did not make any radio transmissions during the canvass. Upon returning to the scene, Lane observed several RMPs arriving at the location. He relayed the facts of the incident to Sergeant Parul Ahmed, who told him to return to the station house to begin an investigation. According to Lane, Hernandez never stated that he had a brother who works in the 52 Precinct. Additionally, he testified that he did not know if this was true.

During cross-examination, Lane could not recall why his vehicle was stationary or estimate how long his RMP was parked on Marion Avenue prior to the time Respondent reversed up the street, but admitted that he did not have an opportunity to make an entry in his Activity Log before the incident occurred. Lane could not recall whether he and Baker were engaged in any enforcement action at the time he parked the RMP. He did not remember if he observed Respondent's vehicle drive past him, southbound on Marion Avenue, nor did he remember if he observed the near-accident at the intersection of Marion Avenue and East 198 Street.

Lane confirmed that, prior to the date of the incident, he had never met Respondent. He could not recall if he had his personal cell phone with him that day, but acknowledged that he ordinarily carried it while on patrol. Baker was his steady partner for a few months prior to February 21, 2010. However, they are no longer steady partners; their assignments changed sometime in the spring of 2010. Lane stated that he thought Baker carried his personal cell phone while on patrol, but could not recall whether Baker made any cell phone calls after initially speaking with Respondent.

POLICE OFFICER DIOGENES ESCANO

Lane could not recall exactly where the livery cab parked, or where Hernandez was located while Lane spoke with Respondent. However, he acknowledged that the livery cab, along with Respondent's vehicle, were out in front, to the left of his RMP. He confirmed that Hernandez and Respondent were not together while Baker spoke with Hernandez. However, he did not know whether Baker made any attempts to keep Hernandez and Respondent at a distance from one another. Lane conceded that he could not hear their conversation.

Lane confirmed that he did not make any radio transmissions pertaining to the incident. He was not certain whether he or Baker called for a supervisor. Lane observed a second livery cab drive down Marion Avenue, although Lane could not recall exactly when this happened. (Lane subsequently learned that this cab was driven by Hernandez's brother, Wellington.)

Lane confirmed that, while he was in the vicinity of his RMP, he observed Respondent drive away and make a left on East 198 Street. Lane got into his RMP and drove south on Marion Avenue and made a left onto East 198 Street. After he made the left, Lane no longer had Respondent's vehicle in sight. He could not recall whether he heard any radio transmissions concerning the near-accident while returning to the scene.

Lane acknowledged that, upon returning from his canvass, there were other RMPs arriving at the scene. Lane explained that he found Ahmed and recited the facts of the occurrence. He confirmed that both Hernandez and Wellington were now on the scene, although he could not recall whether he had a conversation with either of them. Lane could not describe their demeanor at the time, whether they were upset or quiet. He denied having knowledge of whether Hernandez had a brother who worked as an officer

POLICE OFFICER DIOGENES ESCANO

in the 52 Precinct. However, he acknowledged that there are several officers in the 52 Precinct with the last name Hernandez, some of whom he is friendly with. He did not know whether any of them were working the same tour on the date of the incident.

Upon questioning by the Court, Lane described East 198 Street as a two-way street with one lane heading eastbound and one heading westbound. There are generally cars parked on either side of the street. He confirmed that, if a vehicle is parked on the right-hand side of Marion Avenue, and there is also a vehicle parked on the left-hand side, one vehicle would be able to pass through. Lane acknowledged that East 198 Street is the next street after Oliver Street.

According to Lane, the only conversation he had with Hernandez was when Hernandez stated that Respondent pointed a gun at him. He did not recall whether he asked Hernandez to describe the gun to him. Lane believed that he had the same cell phone and number as on the date of the incident, but was not certain.

He acknowledged that he was directed to the 52 Precinct for investigative purposes and that, sometime that morning, an official Department interview was conducted concerning his knowledge of the incident. When asked if he made any entries in his Activity Log prior to the official Department interview, Lane stated: "I would assume so, yes." He did not have his Activity Log present at the trial.

Juan Hernandez

Hernandez has worked for Kiss Car Service, located at 198 Street and Webster Avenue in the Bronx, for nine years. On February 21, 2010, at approximately 6:40 a.m., Hernandez had just begun to work for the day. He drove his 2004 Lincoln Town Car

POLICE OFFICER DIOGENES ESCANO

down East 198 Street. Wellington, who also worked for Kiss Car Service, was in his livery cab, behind Hernandez. Hernandez observed Respondent's vehicle drive down Marion Avenue and approach a stop sign. Respondent's vehicle passed the stop sign without stopping and almost crashed into Hernandez's livery cab. Hernandez testified that he motioned with his head, indicating to Respondent to pay attention. Hernandez was speaking with Wellington on his cell phone earpiece at the time.

Respondent asked Hernandez, in English, if he said something, to which Hernandez replied that he had. As Respondent began to speak to him, Hernandez rolled down his window. Hernandez testified that Respondent called him, "fresh," to which he replied, "The fresh one is you, you passed the stop sign and you shouldn't do that." At this point, Respondent exited his car, pulled out a black pistol from his pants, reached into the cab, pointed it at Hernandez's head and stated that he was a policeman. According to Hernandez, the gun never touched him, but was less than a foot from his head. Hernandez then stated, "I [do not] care if he was a policeman. You passed a stop sign. You're supposed to respect that." Respondent told Hernandez that they should speak with the police officers located on Marion Avenue and Oliver Street. Hernandez remained in his cab throughout the incident.

Wellington, who was behind Hernandez's cab, heard everything on his cell phone, which remained connected throughout the occurrence. He dialed 911 on his cell phone and, by use of the cab's radio, requested that the cab company call 911 as well. Hernandez testified that, at this point, Respondent reversed up Marion Avenue to where Lane's RMP was located. Hernandez and Wellington both reversed up Marion Avenue as well, following Respondent. Hernandez stated that, using his cell phone, he took a

POLICE OFFICER DIOGENES ESCANO

- photograph of Respondent's license plate as soon as Respondent went to speak with the officers.

Respondent then got into his car and left the scene. Hernandez stated to Lane and Baker, "How are you going to let him leave if he took a pistol out and pointed it at me?" Lane told him that he was going to look for Respondent while Baker remained at the location. Five minutes later, Lane returned to the location after he failed to locate Respondent. Ahmed arrived on the scene and was informed of the details of the incident by Lane. Hernandez then spoke to the officers in English, informing them that he had Respondent's license plate number and would dial 911 again if they did not take action.

Hernandez testified that, at this point, the officers began to pay attention to him and brought him to the 52 Precinct. Once there, Hernandez provided the license plate number to the officers, who began to question him. During the questioning, the officers asked Hernandez if he wanted to press criminal charges, to which he replied that he did not. When asked why, he replied: "Imagine you're there and someone puts a pistol into your head for no reason at all in life. In my opinion, that person is just in another world." Hernandez testified that he did not tell Lane or Baker that he had a brother who worked at the 52 Precinct with them. Rather, he stated that they know him because he has a friend,

Person A [REDACTED] who works there, and they had seen him previously with Person A [REDACTED]

During cross-examination, Hernandez stated that, after the near-accident, Respondent made a left onto East 198 Street, such that his driver's side window was next to Hernandez's driver's side window. As soon as Respondent began to roll down his window, Hernandez began to roll down his own window. Hernandez denied that he had a [Patrolmen's] Benevolent Association (PBA) card or other police insignia displayed on

POLICE OFFICER DIOGENES ESCANO

his vehicle. After Respondent pointed his gun at Hernandez, he indicated to the location of the parked RMP and told Hernandez that his “friends” were there. Hernandez could not see the RMP at this time, but saw the RMP earlier, on his way to work, and claimed he knew the RMP was the vehicle to which Respondent was referring.

Hernandez confirmed that he has many acquaintances, including Person A who are police officers in the 52 Precinct as well as other precincts. However, he denied that he relayed this information to Lane or Baker. The police interviewed Hernandez and then Wellington. Hernandez was aware that the interview was being recorded and, upon being read back portions of the transcript, he confirmed that, during the interview, he had agreed to cooperate with the police had they decided to press criminal charges. However, he denied that he personally wanted to press criminal charges. Hernandez acknowledged that he was interviewed again at the station house later that morning and stated, “I don’t want to press charges to the cop because – made a mistake.” He denied that he spoke to anyone in the interim to make him change his mind.

Wellington Hernandez

Wellington has worked for Kiss Car Service since 2002. On February 21, 2010, at approximately 6:40 a.m., Wellington observed Respondent’s vehicle pass the stop sign on Marion Avenue, resulting in a near-collision. He described Respondent’s car as “goldish” and small, with four doors. Wellington heard Respondent say, “Shut up, fuck you” to Hernandez, and then observed Respondent exit his car and point a gun at Hernandez’s head. According to Wellington, Respondent stated, “I’m a fucking cop” as he pointed the gun at Hernandez. While inside his car, Wellington yelled, “He’s my

POLICE OFFICER DIOGENES ESCANO

brother. What's the deal? What's going on?" He testified that Respondent appeared frightened, got back into his vehicle and reversed up Marion Avenue.

Wellington testified that he informed the Kiss Car Service dispatcher that an individual was going to kill Hernandez. He also dialed 911 from his cell phone. Upon arriving where Lane and Baker were located on Marion Avenue, Wellington told the police officers they should not let Respondent leave the scene. He testified that he heard Lane say to Respondent, "It doesn't matter, you leave." Wellington was still connected to 911 and testified that the operator could hear their conversation. Lane asked him to close his cell phone because he and Baker were already on the scene, but Wellington refused because he wanted more policemen to arrive.

Wellington testified that he tried to speak with Ahmed, who did not want to listen to him and tried to calm him down. He handed Ahmed his cell phone, which was connected to 911. He explained that Ahmed told him to leave, but he refused and remained on the cell phone with 911, informing them of what was happening. Wellington did not tell any of the police officers present on the scene that he has friends or relatives who work in the 52 Precinct. He also testified that he did not hear Hernandez state this to the police officers.

Wellington testified that he went to the 52 Precinct, but Ahmed refused to let him enter. They later sent for him and he was interviewed by police officers, to whom he told what happened.

During cross-examination, Wellington confirmed that he began working that day at 5:00 a.m. and, shortly before the incident, contacted Hernandez on his cell phone, using an earpiece. He observed the near-accident and Respondent exit his vehicle, at

POLICE OFFICER DIOGENES ESCANO

which time he pointed the gun at Hernandez's head. He estimated the time at which Respondent was at Hernandez's window to be approximately 20 seconds.

Upon questioning by the Court, Wellington stated that Marion Avenue was one-way, but wider than East 198 Street, a two-way street. He explained that if one car stops on Marion Avenue, a second is still able to pass.

Sergeant Alfred Vargas

Vargas, a 14-year member of the Department, is currently assigned to the Bronx Investigations Unit. On February 21, 2010, he received a phone call regarding an off-duty incident in the 52 Precinct. Vargas testified that he and Sergeant Lagrasta responded to the location of the incident and conducted a canvass for possible videos of the location. The canvass did not produce a video in the area. Vargas and Lagrasta then went to the 52 Precinct to assist the duty captain in the investigation, where they interviewed Hernandez and Wellington. Vargas testified that Wellington made an allegation of misconduct against Lane and Baker during his initial 911 call, in addition to the allegation against Respondent. He also interviewed Hernandez, but was not certain if Hernandez also made such an allegation against Lane and Baker.

During his interview with Vargas, Lane stated that he did not instruct or inform Respondent that he may leave the scene. Rather, he explained that he was surprised when he observed Respondent get into his vehicle and drive away. According to Vargas, Baker stated during his interview that he did not have much contact with Respondent and did not state that Respondent could leave the location.

POLICE OFFICER DIOGENES ESCANO

During his interview with Vargas, Respondent stated that Lane and Baker told him he could leave the scene and that they would handle the incident. He also explained that he thought Lane and Baker were involved in some type of misconduct by allowing him to leave, but did not notify anyone of this misconduct. Respondent informed Vargas that he was armed during the incident, but did not have his Department-issued shield on him at the time.

Following this interview, Vargas completed a form with respect to the allegation that Respondent failed to notify the Internal Affairs Bureau (IAB) of the misconduct of Lane and Baker. Lane and Baker were also added as subjects in regard to Respondent's allegation. However, Vargas testified that the misconduct of Lane and Baker was unsubstantiated based on Hernandez's and Wellington's statements indicating that Lane got into his vehicle and attempted to stop Respondent from leaving the location.

During cross-examination, Vargas confirmed that Wellington was upset because he felt Lane and Baker let Respondent leave the scene, and this was consistent with what Wellington indicated in his 911 call. Additionally, he confirmed that Ahmed got on the phone at some point during the call and relayed the fact that there was a supervisor on the scene.

Vargas conceded that Respondent responded to the 52 Precinct almost immediately after he was called, within a reasonable time. There, Respondent was found fit for duty. According to Vargas, Hernandez observed Respondent present his identification to Lane or Baker. During his interview, Wellington stated that Respondent spoke with Lane and Baker for several minutes before he left the scene, prior to the time when Ahmed arrived. Vargas acknowledged that, based on his investigation, neither

POLICE OFFICER DIOGENES ESCANO

Lane nor Baker had prior contact with Respondent. He did not ascertain whether Lane or Baker had their cell phones on their person on the date of the incident. He did not recall if Respondent indicated that at least one of the two officers called someone at the 52 Precinct.

Police Officer Richard Baker

On February 21, 2010, at approximately 6:40 a.m., Baker observed the Respondent's vehicle reverse up Marion Avenue. Respondent exited his vehicle, positioned in a southwest direction down Marion Avenue, and stated that two men were going to allege that he pointed a gun at them. A cab then reversed up Marion Avenue and Hernandez, the driver, stated that Respondent pointed a gun at him.

According to Baker, Lane asked Respondent if he had a weapon on him, to which he replied that he did and informed Lane that he was an off-duty member of the Department. He then presented his Department identification. Baker testified that he then approached Hernandez, who was located in front of Respondent, on the opposite side of the intersection of Oliver Street and Marion Avenue, about 25 feet southbound. At this point, Lane followed as Respondent drove away and Baker remained on the scene. Baker testified that more police officers had arrived, along with Wellington, who had called 911, unbeknownst to him and Lane.

Baker testified that neither he nor Lane gave Respondent directions or orders indicating that he was free to leave the scene. He testified that Hernandez did not make any statements as to whether he had any close friends or family members that worked in the 52 Precinct or in the Department. He also denied that either he or Lane made statements to Respondent indicating that they would take care of the situation because

POLICE OFFICER DIOGENES ESCANO

Hernandez had a family member or friend that they knew. Ahmed arrived on the scene just after Lane followed Respondent in his RMP. Baker spoke to Ahmed, who informed him to take Hernandez and Wellington back to the station house to conduct further investigation.

During cross-examination, Baker confirmed that he did not observe the near-accident between Respondent and Hernandez. Baker acknowledged that he and Lane were parked on Marion Avenue for about five minutes, but could not recall what they were doing while parked. He denied that their visibility was limited by cars parked in front of their RMP as the Respondent reversed up Marion Avenue. Rather, Baker explained that Marion Avenue slopes downward, which provided him a clear view forward. He confirmed that, at this point, Lane spoke with Respondent and requested that he pull over. Respondent complied and pulled over on the left side of Marion Avenue, near Oliver Street, behind the RMP.

According to Baker, Respondent approached Lane, who was standing in the middle of the street, and told Lane that he was off-duty and presented his Department identification. Baker and Lane then told Respondent to have a seat in his car, which he did. Baker confirmed that, at this point, Hernandez's car reversed up Marion Avenue in the same manner as Respondent. Hernandez pointed at Respondent and stated that he pulled a gun on him. Hernandez then parked on Marion Avenue, on the left-hand side of the street, about ten feet in front of the RMP, after Baker instructed him to do so.

Baker confirmed that Respondent left the scene in his car, before Hernandez had a chance to exit his livery cab. He disputed the claim that he told Respondent to leave the scene. Lane followed Respondent in the RMP, while Baker remained with Hernandez.

POLICE OFFICER DIOGENES ESCANO

Hernandez stated to Baker that Respondent pulled out a black firearm and screamed, "You don't know who you're fucking with." Baker conceded that, at this point, he had not made any radio transmissions pertaining to the information he received from Hernandez or Respondent. According to Baker, Lane was gone less than a minute before returning to the location.

Approximately ten minutes after Baker spoke with Hernandez, Ahmed arrived on the scene. According to Baker, Wellington drove down Marion Avenue and parked on Oliver Street at about the same time that Ahmed arrived on the scene. He could not recall whether Wellington had a conversation with Ahmed. Baker explained what happened to Ahmed, who directed Hernandez and Wellington to report to the station house, along with Lane and Baker. According to Baker, Wellington and Hernandez complied and drove themselves to the station house without any dispute. He described their demeanor as "pretty frantic, upset."

Upon arriving at the station house, Baker and Lane met with their PBA delegate, who was called in to the station house. Baker acknowledged that he carries a cell phone while on patrol, but could not recall whether he made any calls while on the scene. According to Baker, Lane also carries a cell phone while on patrol. Baker denied that he had any contact with Hernandez prior to the incident and denied that Hernandez indicated to him that he knew officers in the 52 Precinct. Baker confirmed that he knew Person AP but explained that he was not working that day. He only spoke with the prosecutor on the case on one occasion prior to testifying and did not review any transcripts of testimony by Lane.

POLICE OFFICER DIOGENES ESCANO

Upon questioning by the Court, Baker confirmed that he heard a radio transmission regarding the incident while he remained on the scene as Lane followed Respondent in the RMP. He explained that the dispatcher advised that there was an assault in progress with a weapon. He believed this was why the police officers responded to the scene so quickly.

Baker did not hear Hernandez or Wellington state that they were reluctant to go to the station house. Rather, he testified that they complied and drove their own vehicles there. Baker testified that he observed Wellington reverse up Marion Avenue in the same manner as Hernandez and park on Oliver Street.

Sergeant Parul Ahmed

Ahmed has worked in the 52 Precinct for a little over two years. On February 21, 2010, he worked an 11:05 p.m. to 8:20 a.m. tour as a patrol supervisor. At 6:40 a.m., he heard a radio call of a dispute with a firearm at Marion Avenue and Oliver Street. At the time Ahmed arrived on the scene, Lane, Baker, Wellington, and Hernandez were present. Baker advised Ahmed of the situation and then went to speak with Respondent who, at this point, left the scene in his vehicle².

Hernandez informed Ahmed that he was involved in a traffic dispute with a person who had a firearm. Ahmed attempted to speak with Wellington, but had difficulties because of the "language barrier." Wellington did not make any allegations of misconduct against Lane or Baker. However, Wellington expressed concern that Ahmed would handle the situation correctly and notify IAB. Wellington was on the phone with IAB, reluctant to return to the station house. Ahmed testified that, to assuage

² Ahmed later testified that Respondent was not present at all while he was on scene.

POLICE OFFICER DIOGENES ESCANO

Wellington's concerns, he used his phone and, through use of an interpreter, explained that he intended on returning to the station house, where he would conduct notifications and interviews. At this point, Wellington showed Ahmed a photograph of Respondent's license plate. Ahmed instructed Hernandez and Wellington to follow Lane and Baker back to the station house. He explained that, although Wellington was not involved in the incident, Hernandez wanted Wellington present while at the station house.

Ahmed testified that, upon returning to the station house, he ran the license plate number from the photograph and determined that it belonged to Respondent. Sergeant Lynch, the desk officer, called Respondent's command and instructed him to report to the 52 Precinct. Ahmed personally called IAB and the duty captain to inform them of the incident. Approximately 45 minutes elapsed from the time Lynch called Respondent until he arrived at the station house. According to Ahmed, Respondent expressed concerns about how long he would have to remain at the station house, but did not make any statements to him regarding the incident or if Lane or Baker instructed him that he was free to leave the scene.

During cross-examination, Ahmed confirmed that Wellington did not initially want to report to the 52 Precinct and told Hernandez not to go. Hernandez was upset, but Ahmed did not know if it was directed at anyone in particular. According to Ahmed, Hernandez and Wellington believed that he was going to cover up the incident and wanted an IAB investigator to conduct the investigation, although neither verbalized this to anyone. He explained that he believed this because of what the IAB investigator told him, although he could not recall his exact words.

POLICE OFFICER DIOGENES ESCANO

Approximately five minutes after Ahmed was on the phone with IAB, a duty captain was notified of the incident. However, IAB was first notified of Respondent's possible misconduct while Ahmed was at the station house. Ahmed acknowledged that he observed the photograph of the license plate, but did not make a copy. Rather, he made a note with the plate number. He agreed that his investigative duties were limited to his role on the scene, which ended after he made the notifications at the 52 Precinct. Sometime thereafter, Ahmed was informed that the Bronx Investigations Unit would take over the investigation.

Ahmed denied that Hernandez stated to him that Lane and Baker directed Respondent to leave the scene. However, he acknowledged that, at one point, Respondent, Hernandez, Lane, and Baker were together.

Upon questioning by the Court, Ahmed testified that Hernandez told him that Respondent got in his car and left the scene. However, Hernandez did not tell him where Lane and Baker were located at the time Respondent left the scene. Ahmed stated that he believed he received two calls from central dispatch pertaining to the incident – a normal dispute and a man with a firearm – however, he was not certain.

Respondent's Case

Respondent testified in his own behalf.

Respondent

Respondent, a five-year member of the Department, was placed on modified assignment in 2009 and transferred to Viper 11 as a result of a domestic incident with his

POLICE OFFICER DIOGENES ESCANO

He was restored to full duty and assigned to the 43 Precinct shortly before the incident on February 21, 2010. On the date of the incident, Respondent worked a double tour and completed his second tour at 6:05 a.m. At approximately 6:40 a.m., Respondent was heading southbound on Marion Avenue towards the intersection of East 198 Street. He testified that he was aware of Lane and Baker's presence in their RMP, parked on Marion Avenue. He expressed his belief that they were enforcing the stop sign at the intersection.

As he approached the stop sign, Respondent stopped, looked around, and then tried to make a left on East 198 Street. He observed Hernandez approaching him and testified that, at this point, they almost collided. There was no physical contact between the two cars. Both vehicles came to a complete stop. Respondent's car was facing eastbound on East 198 Street and Hernandez's cab was parallel to his, facing westbound, with the cars' driver side windows facing one another, only a few inches apart. At the time of the near-accident, Respondent did not observe any other cars on the street or Wellington's cab, located behind Hernandez.

Respondent observed Hernandez speaking on his cell phone with his earpiece. He testified that he did not know if Hernandez was speaking to him or to someone else, but he heard him using profanity while speaking in Spanish. This lasted less than a few minutes. Hernandez and Respondent rolled down their driver side windows. When Respondent asked if he was okay, Hernandez responded by using profanity. Respondent testified that he tried to tell Hernandez that he was not upset about the fact that his car was almost damaged, but Hernandez remained aggressive.

POLICE OFFICER DIOGENES ESCANO

Respondent told Hernandez to calm down and, at this point, informed him that he was a member of the Department. According to Respondent, Hernandez told him that his brother works for the Department in the 52 Precinct, but did not provide his name. Hernandez then pointed to his windshield to make Respondent aware of a PBA logo. He continued to use profanity and told Respondent that he learned from his brother that he only had to call 911 for Respondent to lose his job. Respondent did not reply and denied calling Hernandez fresh. He testified that he did not take out his gun and point it at Hernandez, although he admitted that he had it with him in his vehicle. He did not have his shield present with him because he inadvertently left it at the station house when he went off duty.

Respondent testified that he then reversed up Marion Avenue to where Lane and Baker's RMP was parked. He explained that he did this because he thought the officers were enforcing traffic and that they observed the near-accident. Respondent immediately stated that Hernandez was going to say he pulled a gun on him. He then identified himself as a member of the Department and informed Lane and Baker of the near-accident. He initially spoke with the officers while he was inside his car. The officers directed Respondent to park his car, which he did on Marion Avenue, on the same side of the street as the RMP.

According to Respondent, Hernandez then drove up Marion Avenue, against traffic, to where the RMP was parked. Lane spoke with Hernandez, while Baker spoke with Respondent. Following short conversations, Lane and Baker spoke briefly and began to use their cell phones. At this point, Respondent was standing outside, near his car. He explained that Baker approached him and stated that they were going to the

POLICE OFFICER DIOGENES ESCANO

station house and that they would "take care of this." According to Respondent, Baker then stated, "Go ahead, go to your precinct or go to church, don't worry, we're going to handle this." Respondent told Baker that he did not mind waiting, and asked if they were certain he should leave. He did not know if Lane and Baker had spoken to any other police officers when they told him to leave. He did not have any contact with Wellington.

At the time of the incident, Respondent did not know any officers assigned to the 52 Precinct and had never met or had contact with Lane or Baker. He testified that he is aware of the Department regulations concerning off-duty incidents, and explained that it is the responsibility of a member of the Department to notify his or her supervisor of the incident. However, he stated that the reason he did not wait for a supervisor to arrive is because a uniformed member of the Department instructed him to leave. Respondent then got inside his vehicle and drove southbound down Marion Avenue, looking for a parking spot. He circled the block and saw Lane and Baker having a conversation with Hernandez and Wellington in the same location. He continued down Marion Avenue, made a left onto East 198 Street and drove to Bedford Park, where he parked his vehicle and went home.

Once home, Respondent received a phone call from a 52 Precinct sergeant, who instructed him to report to the station house. He arrived in approximately five minutes. He was interviewed by members of the Bronx Investigations Unit. He informed them that he did not have his shield present with him at the time of the incident. He testified that he did not have any reason to believe that there was any corruption or misconduct related to the incident, or by Lane or Baker.

POLICE OFFICER DIOGENES ESCANO

During cross-examination, Respondent conceded that his firearm was returned to him approximately three weeks prior to the date of the incident. He conceded that there was no traffic control device for vehicles traveling on East 198 Street. Respondent completely turned onto East 198 Street when he made his left off Marion Avenue and his vehicle stopped parallel to Hernandez's cab. He admitted that he could not see Lane and Baker's RMP, but stated that, at the time, he believed they observed the near-accident or heard his brakes.

Respondent confirmed that Hernandez was using profanity and yelling, but denied cursing back. However, Respondent admitted that he yelled at Hernandez when he told him not to use profanity. He conceded that he was upset because of the altercation, but denied that he was angry. He acknowledged that he got out of his car to determine what kind of PBA card Hernandez had on his vehicle and conceded that Hernandez might have seen his firearm, which was located on his front waistband, at this time. He attempted to exit his car but could not open the driver side door. He claimed that he never stepped foot outside of his car.

He agreed that he was aware of the requirement that a patrol supervisor must respond to the scene of an off-duty incident, but denied that Lane and Baker engaged in misconduct when they told him to leave the scene. He explained that Lane and Baker told him that the incident was a mere "miscommunication" and did not warrant this response. Although Respondent testified that he left the scene in his vehicle, he denied knowing that Lane got into his RMP and followed him. He acknowledged that he had his cell phone on him at the time of the incident, but stated that the battery was dead and that

POLICE OFFICER DIOGENES ESCANO

he did not have a charger. He stated that he did not know the reason he received a call directing him to report to the 52 Precinct.

Upon questioning by the Court, Respondent stated that he stopped at the stop sign on Marion Avenue because he did not want to get pulled over by Lane and Baker, looked around and did not see any vehicles. When he made the left turn onto East 198 Street he was surprised that he saw Hernandez's cab approaching rapidly. He told Hernandez that he was a police officer and asked him if he was injured. He tried to explain to Hernandez that he did not see his car, but stated that Hernandez did not want to listen and that he was using an earpiece, speaking on his cell phone. Respondent denied using profanity when speaking to Hernandez. Rather, he claimed that he called Hernandez fresh because he was using so much profanity. He explained that his gun was in an authorized holster, in his front waistband at the time of the near-accident. He acknowledged that it was visible, as his coat was open.

Respondent explained that Hernandez told him that his brother works in the 52 Precinct and informed him how easy it is for a police officer to lose his job. Respondent could not see whether the PBA card had a shield number on it. One of the officers told Respondent that Hernandez's brother is "in the lounge right now" and that he was going to call him. Both Lane and Baker were on their cell phones for two or three minutes, after which Baker told Respondent that it was a miscommunication, they were going to handle it, and that he could leave. Respondent did not think that Baker's actions constituted misconduct.

POLICE OFFICER DIOGENES ESCANOFINDINGS AND ANALYSISSpecification No. 1

Respondent stands charged herein in that while off-duty, on or about February 21, 2010, at Marion Avenue and East 198 Street, in Bronx County, he engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said officer did display and point his firearm at Juan Hernandez during a traffic dispute.

Respondent is found Guilty as charged.

Evidence adduced at trial through the testimony of both Juan Hernandez (Hernandez) and his brother Wellington Hernandez (Wellington) supported this allegation. Hernandez testified that he was driving his Lincoln Town Car for Kiss Car Service down 198 Street at approximately 6:40 a.m. He observed Respondent's vehicle drive down Marion Avenue and approach the stop sign without stopping. Respondent's vehicle almost crashed into Hernandez's car. Hernandez said he motioned with his head to Respondent to pay attention. Respondent pulled up beside Hernandez and asked him if he said something. Hernandez replied in the affirmative and words were exchanged between them. Respondent called Hernandez "fresh." When Hernandez told Respondent words to the effect that he was the fresh one by not stopping at the stop sign, Hernandez testified that Respondent exited his vehicle, pulled out a black gun and pointed it to his head stating words to the effect that he was a police officer and he did not know who he was messing with.

Hernandez said Respondent suggested that they speak to police officers down the street, and Respondent reversed his car to officers on patrol. Hernandez reversed also.

POLICE OFFICER DIOGENES ESCANO

He stated that he used his cell phone to take a picture of Respondent's license plate as soon as Respondent went to speak to the police officers.

Wellington testified that at the same date and time, he was in his vehicle behind his brother, Hernandez, also driving a car for Kiss Car Service. He observed Respondent pass the stop sign on Marion Avenue and cause a near-collision with Hernandez's car. He observed Respondent exit a four-door "goldish" car and proceed to point a gun at Hernandez's head. Wellington yelled, "He's my brother. What's the deal? What's going on?" And then he observed Respondent appear to be frightened, get back into his vehicle and reverse to Marion Avenue. Wellington testified that he contacted the Kiss dispatcher and informed him that someone was trying to kill Hernandez. He also called 911 from his cell phone and remained on the line with them even after he went to where the two police officers, Hernandez and Respondent were on Marion Avenue. Wellington testified that he too, reversed his car to where the others were located.

Respondent testified that he completed a double tour at work at the 43 Precinct which ended at 6:05 a.m. on February 21, 2010. He was heading southbound on Marion Avenue about 6:40 a.m., when he observed two police officers (later identified as Lane and Baker) on Marion Avenue. He testified that he believed they were working to enforce the stop sign. Respondent said he stopped at the stop sign, and as he attempted to make a left on 198 Street, he observed Hernandez's car coming close to him and they almost collided. Respondent testified that the two vehicles were near each other and they both rolled down their windows. He asked Hernandez if he was okay, but Hernandez was talking on his phone and he was uttering profanity and remained aggressive.

POLICE OFFICER DIOGENES ESCANO

Respondent said he was unclear if Hernandez was talking to him or to someone on the cell phone. Respondent said Hernandez told him that he had a brother who worked for the 52 Precinct and he knew that all he had to do was call 911 and allege Respondent pointed his gun and Respondent would lose his job. Respondent said he did not respond to Hernandez, but decided to reverse to where the police officers were assuming that they had observed the near-accident. Respondent spoke to them, informed them of the near-accident and also advised them that Hernandez was going to make allegations regarding brandishing a gun against him. He denied pointing his gun at Hernandez. Respondent wavered between exiting his car, almost getting out, contending that the cars were close together, and not getting out of his car at all.

Respondent said at one point Lane spoke with Hernandez while Baker spoke with him. Baker then told him that he could leave and that Lane, Baker and Hernandez would go to the precinct. Respondent testified that despite being aware that a patrol supervisor was supposed to respond to an off-duty incident such as this, that he was instructed by a uniformed member of the Department to leave, so he left. Respondent got in his car, drove southbound on Marion Avenue, circled the block and saw Baker and Lane still talking to Hernandez and Wellington, made a left onto East 198 Street, drove to Bedford Park, where he parked his vehicle and went home.

Both Lane and Baker testified at this proceeding. Both testified that at no point did they tell Respondent that he was free to leave, particularly since Lane had just learned from Hernandez that he was accusing Respondent of pointing a gun at him. Both officers stated that as Lane asked Respondent if he had his gun on him, he responded, yes, showed his Department ID and shortly thereafter, after he was directed back to his car,

POLICE OFFICER DIOGENES ESCANO

Respondent drove away in his car. Baker and Lane testified that when Respondent left the scene, Lane followed after him in his RMP, but lost him. Both Hernandez and Wellington corroborated this account that Lane followed after Respondent, who left the scene.

Respondent's account lacks credibility. He wavered between staying in his car and getting out. He testified that he was unsure whether Hernandez was talking to him or someone else on his cell phone because he had an earpiece in. Respondent also made reference to seeing PBA cards on Hernandez's dashboard. All of these observations are consistent with Respondent exiting his vehicle. If he remained in his car during the altercation, it would be difficult for him to determine that Hernandez had PBA cards on his dashboard if he only observed them from looking in the inside of Hernandez's vehicle from inside his own vehicle and could not see the front of the PBA cards. Of particular concern is if Respondent remained inside of his vehicle, how both Hernandez and Wellington would be able to observe that Respondent had a black gun. Moreover, Respondent testified that after he left the scene, he circled back around to observe the two police officers still speaking with Hernandez and Wellington. This account is incredible. Had Respondent circled back around in his gold car, he would have been observed by the four people still on the scene. If Respondent had the presence of mind to circle back, he should have returned to the scene and waited for a supervisor. Respondent left hoping to never be identified. But for the cell phone picture of his license plate number taken by Hernandez, Respondent would have never been identified later on by a supervisor.

In addition, both Hernandez and Wellington stated that they were on the cell phone with each other during the altercation. Respondent was able to hear what sounded

POLICE OFFICER DIOGENES ESCANO

like Hernandez on the cell phone with someone. He may not have been able to make this observation if he were not outside of his vehicle. Respondent's account corroborates Hernandez and Wellington. It must also be noted that Wellington called his base to report that someone was trying to kill Hernandez. He also called 911 and reported the display of a gun and remained on the cell phone with them even when a patrol supervisor eventually did respond to the scene. It leads the Court to believe that something did transpire causing Hernandez to use his cell phone to take down the license plate number of Respondent's car; and Wellington to remain on the line with 911 during the entire incident.

Respondent argued that there were inconsistencies in Hernandez's account and Wellington's account. For one, Hernandez said he almost hit the front side of Respondent's car during the near-collision. Wellington said the same thing; he then referred to the front, right side of the car. It must be noted that Wellington testified through an interpreter. He understood little English and conceivably could have misunderstood if the question were asking what part of Respondent or Hernandez's car was almost hit. Secondly, Wellington testified that Respondent "almost ran" out of his car as he approached Hernandez's car and pointed his gun at Hernandez. Hernandez did not give this account. The Court takes notice of the fact that these two witnesses had the events unfold from different vantage points. While Wellington sat in his car behind what he observed was happening to his brother, Hernandez had a gun pointed to his head. He cried as he testified on the stand, concerned that he would not live to see his son again. It is unlikely that he would remember whether Respondent walked or almost ran over to his car before pointing a gun to his head. He was also never asked that question.

POLICE OFFICER DIOGENES ESCANO

Respondent also tried to discredit the testimony of Baker and Lane alleging that they gave permission for Respondent to leave the scene and failed to immediately call a patrol supervisor to the scene. The Court notes that this incident involved two complainants in two separate vehicles along with Respondent in a third vehicle. It would likely take some time for the officers on the scene to take statements from each person to understand what transpired before calling a supervisor to the scene. It also defies logic why Baker would allow Respondent to leave the scene, and then Lane would then jump in his RMP to pursue Respondent once he left the location without being stopped by Baker.

Based on the credible testimony of both Hernandez and Wellington, who also corroborated Baker and Lane's testimony, Respondent is found Guilty of Specification No. 1.

Specification Nos. 2 and 3

Respondent stands charged herein in that, having been involved in an off-duty incident, he did thereafter fail and neglect to report said incident to the Patrol Supervisor, as required. He is also charged with failing to remain at the scene of the off-duty incident when it was feasible and consistent with his personal safety. Respondent is found Guilty.

Respondent testified that he was aware of the requirement that he remain at the scene of the incident for a patrol supervisor to respond given the fact that he was involved in an off-duty incident. He stated, however, that since a uniformed member of the service, Baker, instructed him to leave the location, he followed his directive. Lane as well as Baker, however, denies that Respondent was ever told that he could leave the

POLICE OFFICER DIOGENES ESCANO

scene. Ahmed, the patrol supervisor who arrived on the scene stated that he found Lane, Baker, Hernandez and Wellington on the scene. At that time, Baker informed him of what transpired and informed him that as Baker attempted to speak to Respondent, he left the scene. Ahmed said that both Wellington and Hernandez told him that Respondent left the scene.

Ahmed stated that Wellington showed him a photograph from the license plate of the car that left the scene. The parties (except Respondent) went to the 52 Precinct station house. Once the license plate revealed the owner to be Respondent, Respondent was directed to appear at the 52 Precinct. Ahmed stated that Respondent arrived 45 minutes later. He questioned how long he would have to remain at the station house, but he did not mention that Baker and/or Lane told him that he could leave the incident location.

In addition, even if Baker and/or Lane told Respondent he could leave the scene, the nature of the allegation in the off-duty incident required Respondent to remain at the scene until a patrol supervisor responded. Otherwise, Respondent had a duty to report to the precinct of occurrence and report the incident to a patrol supervisor there. Instead, Respondent left the scene and went home. But for the cell phone photograph of Respondent's license plate, his identity once he left the scene would have likely remained unidentified.

Given the fact that Respondent acknowledged that he left the scene despite knowing the Patrol Guide requirements to remain at the scene and report the incident to a patrol supervisor, he is found Guilty of Specification Nos. 2 and 3.

POLICE OFFICER DIOGENES ESCANOSpecification No. 4

Respondent stands charged herein in that while off-duty on February 21, 2010, he failed to carry his shield while armed as required. Respondent is found Guilty. Respondent acknowledged during the course of his testimony that when he was interviewed on the incident date by members of the Bronx Investigations Unit, he informed them that he did not have his shield at the time of the incident. He testified before this Court that he inadvertently left his shield at the command following his double tour of duty.

Accordingly, based on Respondent's own admission, he is found Guilty of Specification No. 4.

Specification No. 5

Respondent stands charged herein in that while off-duty on February 21, 2010, having become aware of, or upon receiving an allegation of corruption or serious misconduct involving a member of service, he did fail and neglect to notify the Internal Affairs Bureau, as required. Respondent is found Guilty.

The Assistant Department Advocate contends that because Respondent alleges that Baker and Lane allowed him to leave the scene where an allegation of serious misconduct was made by Hernandez and Wellington, that Respondent had a duty to notify IAB. The Court agrees. It is the belief of this Court that neither Lane nor Baker directed Respondent to leave the scene. However, the gravamen of this charge is that it is Respondent's claim as he understood it, that Baker and Lane allowed him to leave the location. If the Court follows Respondent's claim, then Respondent had a duty to report

POLICE OFFICER DIOGENES ESCANO

that misconduct committed by Lane and Baker to IAB. Respondent understood that Hernandez alleged that he [Respondent] pointed his firearm at his head. That allegation is a serious allegation of misconduct. To allow Respondent to then leave the scene, without an investigation by a patrol supervisor or any other supervisor is serious misconduct on the part of Baker and Lane. Respondent had a duty to report to IAB their misconduct in allowing him to leave the scene without an investigation.

Accordingly, Respondent is found Guilty of Specification No. 5.

Specification No. 6

Respondent stands charged herein in that on or about March 29, 2010, at a location known to this Department in Bronx County, he did wrongfully and without just cause prevent or interfere with an official Department investigation, to wit: said officer stated during an official Department interview that an on-duty member of the service directed said officer to leave the scene of an off-duty incident involving said officer. Respondent is found Guilty as charged. Respondent alleged that during the course of his discussion with Baker, he was told he could leave the location. Baker and Lane ended up being interviewed as subjects based on Respondent's statement. It was later determined that Lane and Baker denied giving Respondent permission to leave the location and that Baker, Lane, Hernandez and Wellington all stated that after Respondent left the location, Lane jumped in his patrol car and followed after him.

Respondent argued that Wellington stated that the police officers allowed Respondent to leave the scene, which corroborates his account. The Court notes that Wellington had a distrust of the police on this date. Respondent, a police officer, pointed

POLICE OFFICER DIOGENES ESCANO

a gun at his brother. Respondent, a police officer, then reversed away from the scene. Respondent, a police officer, was then seen leaving in his car after speaking with two other police officers, Lane and Baker. Although it was established through testimony that Wellington was on his cell phone with 911 the entire time when he arrived where Lane and Baker were; he believed that Lane and Baker were the police officers who allowed Respondent to leave the scene because Respondent drove off. Wellington testified that he heard Lane say to Respondent, "It doesn't matter, you leave," yet Wellington remained on the telephone in conversation with 911. He also had a limited understanding of the English language as he used an interpreter to testify in this forum. In addition, Lane was speaking to Hernandez while Baker spoke to Respondent and Respondent alleged that Baker told him he could leave, not Lane.

All of these inconsistencies lead the Court to believe that Respondent wrongfully interfered with the Department investigation when he alleged that Baker told him he was free to leave in the midst of the investigation into what happened, prior to the arrival of the patrol supervisor.

Accordingly I find Respondent Guilty of Specification No. 6.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on July 10, 2006. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

POLICE OFFICER DIOGENES ESCANO

Respondent has been found Guilty of displaying his firearm at Juan Hernandez during a traffic dispute; neglecting to report the incident to a patrol supervisor or remain at the scene; failing to carry his shield while armed; failing to report an allegation of serious misconduct to IAB; and interfering with an official Department investigation.

The Assistant Department Advocate asked for a penalty of termination, I agree.

Respondent has demonstrated himself to be unfit to hold the position of police officer with the New York City Police Department. He engaged in road rage with a motorist and brandished his firearm. He left that scene of the off-duty incident and reversed his car down a street without police necessity. Once in the presence of two police officers, Baker and Lane who could have commenced the investigation into this matter, he left the scene and failed to report the incident to a patrol supervisor. Respondent left the scene by driving away despite being followed by Lane in an RMP. Respondent had his firearm but failed to carry his shield while armed. Respondent alleged that the police officers told him he could leave the scene, yet he failed to report this act of misconduct to IAB. Respondent then, during his official Department interview into this matter, implicated Lane and Baker by stating that they directed him to leave the scene where two motorists were present and alleged that Respondent brandished a firearm.

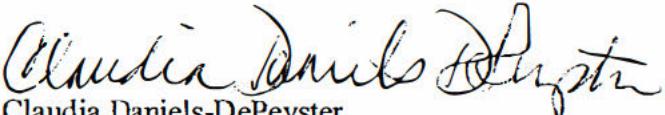
Respondent has demonstrated by his conduct in this entire matter that he is incapable of upholding the duties and responsibilities of a New York City Police Officer while off-duty, particularly at a time when he had just been removed from modified assignment two weeks earlier for a domestic incident involving slapping his [REDACTED] Respondent's lack of courtesy, professionalism and respect to Hernandez; his failure to comply with Department procedures to remain at the scene and insure that this incident

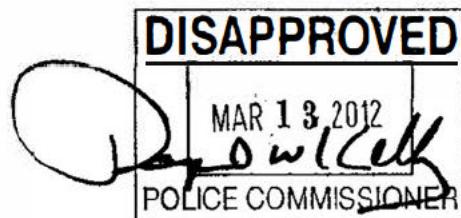
POLICE OFFICER DIOGENES ESCANO

was reported to a supervisor; his failure to carry his shield, among other violations; demonstrate that Respondent should be separated from his position with the Department.

Accordingly, I recommend that Respondent be DISMISSED from employment with the New York City Police Department.

Respectfully submitted,


Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER DIOGENES ESCANO
TAX REGISTRY NO. 941711
DISCIPLINARY CASE NO. 86562/10

In 2008, Respondent received an overall rating of 3.5 "Above Competent" on his annual performance evaluation. In 2007, he received a rating of 4.0 "Highly Competent." The Respondent has received no medals in his career to date.

[REDACTED]

On April 8, 2009, Respondent received Charges and Specifications for being involved in an off-duty verbal and physical altercation with [REDACTED] in which he slapped her. Respondent was then placed on modified assignment for the good of the Department. On August 12, 2009, Respondent pleaded Guilty and received a penalty of the forfeiture of 20 vacation days and agreed to cooperate with counseling. Respondent's modified assignment was discontinued on February 4, 2010. On February 21, 2010, Respondent was placed on modified assignment for leaving the scene of a police incident (this case). On March 8, 2010, Respondent was placed in Level II Discipline Monitoring based on his overall record.

For your consideration.



Claudia Daniels-DePeyster
Assistant Deputy Commissioner Trials